IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIDINARY ORIGINAL CIVIL JURISDICTION

Appeal No. 832 of 2004
in
Notice of Motion No.23l0 of 2002
in
Suit No. l4l6 of 2002
Sajjad Abdul Rasul Kanji... appellant
vs
Shamim Moledina and ors.....respdts

Ms Deepa Mani with Mr N Sahu i/bS K Srivastav and co for appellant
Ms Vinita Bhandare i/b Bhave and co for respondent no.2

CORAM: A.P.SHAH & S.J.VAZIFDAR JJ.

Dated l2.l.2005

P.C:

l. Heard learned counsel for the appellant and respondent no. 2. Respondent no.l is absent despite service.

2. This appeal is directed against the order of the learned single Judge dismissing the Notice of Motion taken out by the plaintiff. The plaintiff has filed the present suit seeking a decree or declaration that the plaintiff is the owner of the jewellery kept in the safe custody of defendant no.2 bank at its Peddar Road Branch, Mumbai, which is described in Exh C to the plaint. The plaintiff is also seeking a decree directing the defendant no. 2 Bank to deliver the jewellery to the

plaintiff. According to the plaintiff the owner of the jewellery is the deceased mother of the plaintiff who has died in the year l988. The locker where the jewellery is kept, stands in the names of plaintiff, defendant no.l and the deceased mother of the plaintiff. As the locker was in the names of three persons on the death of the mother, unless the plaintiff gets a declaration from the competent court that he is the owner of the jewellery and that it is inherited by him, the bank would not be in a position to delivery the jewellery to the plaintiff. It appears that the bank has refused to hand over the jewellery to the plaintiff therefore the plaintiff has filed the present suit and in that suit this motion was taken out for appointment of Commissioner to make valuation of the jewellery and to keep the jewellery in the custody of the court or in the alternative to hand over the same to the plaintiff on his furnishing bank guarantee. The Notice of Motion was dismissed by the learned single Judge solely on the ground that the cause of action would accrue on the date of death of the mother in l988 and not after the bank refused to deliver the jewellery in l998 and, therefore, prima facie suit is barred by limitation.

3. It is impossible to agree with the view taken by the learned single Judge. It is an admitted position that the plaintiff is the co-owner of the locker and the charges of the locker are paid by him. As per the terms of the lockers plaintiff is entitled to the locker after the death of his mother. The bank has not even claimed any right in respect of the jewellery which is kept in the bank's locker and in fact the learned counsel for the bank has submitted to the orders of the court. The learned Judge was thus clearly in error in holding that the cause of action accrued in l988 when the mother died and the suit is barred by limitation. As far as the present suit is concerned the cause of action had arisen when the bank refused to deliver the jewellery to the plaintiff. The defendant no.l who is a co-owner of the locker has not appeared before the learned single Judge nor before us. In the circumstances, the Notice of Motion No.23l0 of 2002 is made absolute in terms of prayer clauses (a), (b) and (c).